

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

ADELL BROADCASTING CORPORATION and  
STN.COM, INC.,

UNPUBLISHED  
February 14, 2012

Plaintiffs-Appellants,

v

JOSEPH EHRLICH, Trustee of the FRANKLIN Z.  
ADELL TRUST, DAVID GORCYCA, Trustee,  
LAURIE FISCHGRUND, and JULIE VERONA,

No. 299061; 299966  
Macomb Circuit Court  
LC No. 2010-001920-CZ

Defendants-Appellees.

---

Before: FORT HOOD, P.J., and HOEKSTRA and METER, JJ.

PER CURIAM.

Plaintiffs, Adell Broadcasting Corp. and STN.com, Inc., appeal by right from the trial court's order granting summary disposition pursuant to MCR 2.116(C)(4) in favor of defendants: Franklin Z. Adell Trust; Joseph Ehrlich, trustee of the Franklin Z. Adell Trust and personal representative of the estate of Franklin Z. Adell; David Gorcyca, trustee of the Franklin Z. Adell Trust; and Laurie Fischgrund and Julie Verona, beneficiaries of the Franklin Z. Adell Trust. We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

**I. FACT AND PROCEDURAL HISTORY**

This appeal challenges the actions by the administrators and beneficiaries of the Franklin Z. Adell Trust (the Trust), a matter that has been ongoing in the Oakland County Probate Court since September 2008. The Trust was established in 2002 by Franklin Z. Adell for the benefit of his three children: Kevin Adell, Julie Verona, and Laurie Fischgrund. The Trust consists of three primary assets: Adell Broadcasting Corp., STN.com, Inc., and Birmingham Properties, Inc. Over eighty percent of Adell Broadcasting's stock is owned by the Trust. STN.com, Inc. and Birmingham Properties are wholly owned by the Trust.

Franklin Adell died on August 13, 2006. At the time his death, the Trust's assets were worth approximately \$24.6 million. Upon the death of his father, Kevin Adell assumed multiple positions of authority with respect to the Trust and the Trust's companies. Kevin Adell became the successor trustee of the Trust, and he also became president and director of Adell Broadcasting, STN.com, Inc. and Birmingham Properties.

In September 2008, Kevin Adell's sisters, defendants Julie Verona and Laurie Fischgrund, commenced an action in the Oakland County Probate Court seeking a temporary restraining order, court supervision of the Trust, removal of Kevin Adell as trustee, and an action for accounting. In this probate action, there were concerns that Kevin Adell violated his fiduciary duties owed to the Trust, Adell Broadcasting, STN.com, Inc., Birmingham Properties, and to the other beneficiaries, his sisters. There were assertions of misappropriation of funds, payments of excessive compensation, and improper purchases. On September 22, 2008, the Oakland County Probate Court suspended Kevin Adell as trustee and enjoined him from receiving any benefits from the Trust. The probate court appointed a special fiduciary to investigate Kevin Adell's management of the Trust and its assets. Pending the investigation, the probate court appointed Ralph Lameti and David Gorcyca as co-trustees.

On March 18, 2010, after a seventeen month investigation, the special fiduciary submitted her report and recommendations to the Oakland County Probate Court. The special fiduciary found that Kevin Adell breached his fiduciary duties to the Trust and the Trust's companies. The special fiduciary recommended, among other things, that Kevin Adell remain suspended, and that the probate court appoint a personal representative nominated by Julie Verona and Laurie Fischgrund to manage the estate. The special fiduciary also recommended that the probate court make a referral to appropriate law enforcement agencies to review whether Kevin Adell had misappropriated or embezzled corporate funds and Trust assets. On March 30, 2010, the probate court issued an order continuing the suspension of Kevin Adell as trustee. The probate court appointed Joseph Ehrlich as independent trustee of the Trust and personal representative of the Estate of Franklin Z. Adell.

On May 4, 2010, shortly after the Oakland County Probate Court issued its order, plaintiffs filed this action in the Macomb County Circuit Court against defendants. The complaint alleged that defendants were acting in concert to have unauthorized communications with the IRS regarding Adell Broadcasting. The complaint alleged that these contacts were made for the purpose of investigating defendants' ability to sell or otherwise encumber assets of Adell Broadcasting to pay estate taxes owed to the IRS. Plaintiffs alleged that defendants were interfering with the management of Adell Broadcasting, and tortiously interfering with Adell Broadcasting's business contracts, relationships, and expectancies.

Defendants filed multiple motions for summary disposition and argued, among other things, that the complaint should be dismissed because the Macomb County Circuit Court lacked subject-matter jurisdiction. Defendants argued that the complaint concerned the administration of the estate of Franklin Z. Adell and the Trust, matters within the exclusive jurisdiction of the probate court. While their motions were pending, defendants also filed motions for costs, attorney fees, and sanctions.

After hearing arguments on defendants' motions for summary disposition, the circuit court granted defendants' motions. The circuit court concluded that plaintiffs' complaint involved the settlement of the estate of Franklin Z. Adell, which was within the exclusive jurisdiction of the probate court. The circuit court took defendants' motions for sanctions under advisement. On July 7, 2010, the circuit court issued a written order granting defendants' motions for sanctions. The court found that plaintiffs' complaint was frivolous and determined

that an award of costs was appropriate. The court ordered defendants to submit bills, supported by affidavits, setting forth of fees and cost incurred in defending the action.

Plaintiffs objected to the costs and filed a motion for an evidentiary hearing to determine the accuracy and reasonableness of the submitted costs. A hearing on plaintiffs' motion was held on August 23, 2010. After hearing arguments, the circuit court denied plaintiffs' request for an evidentiary hearing. The circuit court accepted the submitted bills of cost in full. Upon the request of defendants' attorneys, the court ordered that Kevin Adell be personally responsible for paying the awarded costs.

Plaintiffs now appeal from the circuit court order dismissing plaintiffs' complaint for lack of subject-matter jurisdiction. Additionally, plaintiffs appeal from the circuit court order imposing sanctions. Plaintiffs argue that the circuit court committed clear error when it determined their complaint was frivolous. Plaintiffs also argue the circuit court erred when it denied plaintiffs' motion for an evidentiary hearing to determine the reasonableness of the submitted attorneys' fees and costs. Finally, plaintiffs argue that the circuit court did not have authority to impose sanctions against Kevin Adell because he was not a party to the litigation.

## II. SUBJECT-MATTER JURISDICTION

Plaintiffs argue that the circuit court erred when it dismissed plaintiffs' complaint for lack of subject-matter jurisdiction.

The trial court's decision regarding a motion for summary disposition is reviewed de novo. *In re Egbert R Smith Trust*, 480 Mich 19, 23-24; 745 NW2d 754 (2008). Issues involving statutory interpretation present questions of law reviewed de novo. *Klooster v City of Charlevoix*, 488 Mich 289, 295-296; 795 NW2d 578 (2011).

Circuit courts are courts of general jurisdiction vested with original jurisdiction over all civil claims and remedies unless exclusive jurisdiction is given by constitution or statute to some other court. *Manning v Amerman*, 229 Mich App 608, 610-611; 582 NW2d 539 (1998). Probate courts are courts of limited jurisdiction that derive all of its power from statutes. *Id.* at 611; *In re Wirsing*, 456 Mich 467, 472; 573 NW2d 51 (1998). To determine jurisdiction, this Court must look beyond the plaintiff's choice of labels to examine the true nature of the plaintiff's claims. *Manning*, 229 Mich App at 613.

Questions surrounding subject-matter jurisdiction present questions of law and are reviewed de novo. *In re Lager Estate*, 286 Mich App 158, 162; 779 NW2d 310 (2009). Generally, subject-matter jurisdiction is defined as a court's power to hear and determine a cause or matter. *Id.* More specifically, subject-matter jurisdiction is the deciding body's authority to try a case of the kind or character pending before it, regardless of the particular facts of the case. *MJC/Lotus Group v Twp of Brownstown*, \_\_\_ Mich App \_\_\_, \_\_\_; \_\_\_ NW2d \_\_\_ (2011) (Docket No. 295732), slip op p 3.

Jurisdiction of the subject matter is the right of the court to exercise judicial power over a class of cases, not the particular case before it; to exercise the abstract power to try a case of the kind or character of the one pending. The question of jurisdiction does not depend on the truth or falsity of the charge, but

upon its nature: it is determinable on the commencement, not at the conclusion, of the inquiry. Jurisdiction always depends on the allegations and never upon the facts. When a party appears before a judicial tribunal and alleges that it has been denied a certain right, and the law has given the tribunal the power to enforce that right if the adversary has been notified, the tribunal must proceed to determine the truth or falsity of the allegations. The truth of the allegations does not constitute jurisdiction. [*Altman v Nelson*, 197 Mich App 467, 472; 495 NW2d 826 (1992) (citations omitted).]

Subject-matter jurisdiction cannot be waived and can be raised at any time by any party or the court. *MJC/Lotus*, slip op at 3. The plaintiff bears the burden of demonstrating subject-matter jurisdiction. *Phinney v Perlmutter*, 222 Mich App 513, 521; 564 NW2d 532 (1997).

“The probate court has exclusive jurisdiction over trust and estate matters.” MCL 600.601(3)(a). MCL 700.1302 sets forth the probate court’s jurisdiction and provides in relevant part:

The court<sup>[1]</sup> has exclusive legal and equitable jurisdiction of all of the following:

(a) A matter that relates to the settlement of a deceased individual’s estate, whether testate or intestate, who was at the time of death domiciled in the county or was at the time of death domiciled out of state leaving an estate within the county administered, including, but not limited to all of the following proceedings:

(i) The internal affairs of the estate.

(ii) Estate administration, settlement, and distribution.

(iii) Declaration of rights that involve an estate, devisee, heir, or fiduciary.

(iv) Construction of a will.

(v) Determination of heirs.

(vi) Determination of death of an accident or disaster victim under section 1208.

(b) A proceeding that concerns the validity, internal affairs, or settlement of a trust; the administration, distribution, modification, reformation, or termination of a trust; or the declaration of rights that involve a trust, trustee, or

---

<sup>1</sup> As used in this section, “‘Court’ means the probate court or, when applicable, the family division of circuit court.” MCL 700.1103(j).

trust beneficiary, including, but not limited to, proceedings to do all of the following:

- (i) Appoint or remove a trustee.
- (ii) Review the fees of a trustee.
- (iii) Require, hear, and settle interim or final accounts.
- (iv) Ascertain beneficiaries.
- (v) Determine a question that arises in the administration or distribution of a trust, including a question of construction of a will or trust.
- (vi) Instruct a trustee and determine relative to a trustee the existence or nonexistence of an immunity, power, privilege, duty, or right.
- (vii) Release registration of a trust.
- (viii) Determine an action or proceeding that involves settlement of an irrevocable trust.

Plaintiffs argue that the circuit court erred when it dismissed plaintiffs' complaint for lack of subject-matter jurisdiction because plaintiffs' complaint alleged a tort, and MCL 700.1302 does not grant the probate court jurisdiction over tort claims. Therefore, plaintiffs argue that the circuit court had exclusive jurisdiction over the matter. Plaintiffs' argument is without merit.

A party's choice of label for a cause of action is not dispositive. We are not bound by the choice of label because to do so would exalt form over substance. *Johnston v City of Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). A party cannot avoid the dismissal of a cause of action based on artful pleading. *Maiden v Rozwood*, 461 Mich 109, 135; 597 NW2d 817 (1999). The gravamen of a plaintiff's action is determined by examining the entire claim. *Id.* The courts must look beyond the procedural labels in the complaint and determine the exact nature of the claim. *MacDonald v Barbarotto*, 161 Mich App 542, 547; 411 NW2d 747 (1987). Moreover, when reviewing a motion challenging subject-matter jurisdiction under MCR 2.116(C)(4), a court must determine whether the affidavits, together with the pleadings, depositions, admissions, and other documentary evidence, demonstrate that the court lacks subject matter jurisdiction. *L & L Wine & Liquor Corp v Mich Liquor Control Comm*, 274 Mich App 354, 356; 733 NW2d 107 (2007); see also MCR 2.116(G)(5).

In *Manning*, 229 Mich App at 609-610, the plaintiffs, beneficiaries of a trust, filed a complaint in circuit court against the trustee of the trust and his attorney, alleging tortious interference with a prospective advantage/expectancy, tortious interference with a trust/contractual relationship, intentional infliction of emotional distress, negligent infliction of emotional distress, legal malpractice, breach of contract, and unjust enrichment. The circuit court dismissed the complaint pursuant to MCR 2.116(C)(4), holding that the plaintiffs' claims were within the exclusive jurisdiction of the probate court. *Id.* at 610. On appeal, the plaintiffs alleged that the circuit court erred in holding that the probate court had exclusive jurisdiction of

the emotional distress and malpractice claims because the cause of action arose out of the administration of a trust. This Court rejected plaintiffs' contention, holding that, by statute, the probate court had exclusive legal and equitable jurisdiction of claims involving the administration of an estate. *Id.* at 611-614. Pursuant to the *Manning* decision, our plaintiffs' contention that raising tort claims in the complaint precluded summary disposition is simply without merit.

In the present case, plaintiffs' complaint sued defendants in their capacity as administrators or beneficiaries of a trust. The substance of plaintiffs' complaint alleged that defendants were communicating with the IRS about the possibility of selling or otherwise encumbering Adell Broadcasting's assets to make an estate tax payment. A federal estate tax is "imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States." 26 USC 2001(a). In this case, a federal estate tax of over \$15 million was imposed on the transfer of the estate of Franklin Z. Adell. Kevin Adell, as trustee, elected to pay approximately \$8 million up-front and defer payment of approximately \$7 million over a fifteen year period. The estate tax payment referenced in plaintiffs' complaint related to the deferred payment plan elected by Kevin Adell. Therefore, the complaint raised a matter related to the internal affairs and "settlement of a deceased individual's estate. . . ." MCL 700.1302(a). As the proposed personal representative of the estate, defendant Joseph Ehrlich had an obligation to ensure that debts and taxes with priority under federal law are paid. 26 USC 2002; see also MCL 700.3805 and MCL 700.3807.

Further, whether the Trust's assets should be used to pay the estate tax is an issue concerning the internal affairs and administration of the Trust. MCL 700.1302(b)(v) provides the probate court with a broad jurisdictional grant to "[d]etermine a question that *arises* in the administration or distribution of a trust. . . ." (Emphasis added). Here, the complaint relates to the Trust's assets and whether those assets should be sold or otherwise encumbered to make the federal estate tax payment. The federal estate tax is imposed upon the gross estate, which includes the Trust and all its assets. 26 USC 6324. Adell Broadcasting and STN.com, Inc. are business assets owned by the Trust. As such, the federal estate tax is levied against the assets of both Adell Broadcasting and STN.com, Inc. Therefore, it would appropriate for Joseph Ehrlich, as the personal representative and trustee, to discuss using Adell Broadcasting's assets to pay the estate tax.

In sum, the allegations contained in plaintiffs' complaint relate to the administration of the estate of Franklin Z. Adell and the Franklin Z. Adell Trust. The probate court has exclusive jurisdiction over trust and estate matters. MCL 600.601(3)(a); MCL 700.1302. Plaintiffs' use of the word "tortious" in their complaint does not change the true nature of their claim. *Manning*, 229 Mich App at 613-614.

### III. FRIVOLOUS COMPLAINT

Plaintiffs argued that the circuit court erred when it determined that plaintiffs' complaint was frivolous. A determination whether a claim is frivolous depends upon the particular circumstances of each case. *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002). A trial court's finding whether a claim or defense was frivolous will not be reversed on appeal unless clearly erroneous. *Id.* at 661. A finding is clearly erroneous when, although there is

evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made. *Id.* at 661-662.

Although plaintiffs argue that the circuit court erred when it determined their complaint was frivolous, the substance of plaintiffs' argument is that the complaint was not frivolous because the circuit court had subject-matter jurisdiction over the claim. As discussed above, the circuit court did not err when it determined that it lacked subject-matter jurisdiction. When looking beyond plaintiffs' choice of labels, *Manning*, 229 Mich App at 613, it is clear that plaintiffs' complaint was premised on the administration of the Trust and the estate of Franklin Z. Adell. As such, the issue was within the exclusive jurisdiction of the probate court. MCL 700.1302; MCL 600.601(3)(a).

Further, the circuit court did not clearly err when it determined that plaintiffs' complaint was frivolous. MCR 2.625(A)(2) provides that "if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591." Under MCL 600.2591(3)(a), an action is "frivolous" if one or more of the following conditions are present:

- (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.
- (ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.
- (iii) The party's legal position was devoid of arguable legal merit.

Although no discovery had been conducted, there were sufficient facts of record from which the circuit court could conclude that plaintiffs' lawsuit was frivolous. There was ongoing and highly contested litigation in the Oakland County Probate Court at the time the complaint was filed. The complaint was filed shortly after Kevin Adell was removed as trustee. The complaint failed to reference the probate proceedings in any way. The report of the special fiduciary alleged improprieties by Kevin Adell as trustee. The report also explained that since Kevin Adell's sisters initiated proceedings in probate court, Kevin Adell had spared no expense in trying to obstruct the probate court's investigation and prevent his sisters from obtaining any relief. Further, plaintiffs' complaint focused on the payment of estate tax liability, a matter relating to the settlement and administration of the estate of Franklin Adell. This was a matter within the exclusive jurisdiction of the probate court. Based on the facts and circumstances of this case, the circuit court did not clearly err in finding that the filing of the complaint was frivolous. The only purpose for the circuit court litigation was to harass and injure defendants with further litigation.

#### IV. REASONABLE SANCTIONS

Plaintiffs assert that the circuit court erred when it denied their motion for an evidentiary hearing to determine whether the submitted fees and costs were reasonable. If a trial court determines that a claim is frivolous, sanctions are mandatory, and the trial court does not have discretion to forego sanctions. *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 268; 548 NW2d 698 (1996). The trial court's determination of the amount of the sanctions imposed is

reviewed for an abuse of discretion. *In re Costs & Attorney Fees*, 250 Mich App 89, 104; 645 NW2d 697 (2002).

The circuit court determined that plaintiffs' complaint was frivolous and ordered plaintiffs to pay costs as appropriate under MCR 2.625 and MCL 600.2591. Section 2591(1) provides "that if a court finds that a civil action . . . was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action . . . ." Section 2591(2) provides as follows: "The amount of costs and fees awarded under this section shall include all **reasonable costs** actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and **reasonable attorney fees**." (Emphasis added).

Plaintiffs argue that an evidentiary hearing was required to determine the reasonableness of the submitted fees and costs. We disagree. "If the trial court has sufficient evidence to determine the amount of attorney fees and costs, an evidentiary hearing is not required." *John J Fannon Co v Fannon Prods, LLC*, 269 Mich App 162, 171; 712 NW2d 731 (2005). In this case, defendants' attorneys submitted detailed invoices and supporting affidavits outlining the fees and costs incurred in defending the litigation. The attorneys listed the hourly rates charged by each attorney and the number hours each attorney worked. The circuit court stated that there was nothing remarkable about the hourly rates charged. The issue was the number of hours worked, and the circuit court correctly concluded that an evidentiary hearing would not uncover any information that had not already been provided. The circuit court had sufficient evidence to determine costs and fees without conducting an evidentiary hearing. *Id.* at 171. Therefore, no evidentiary hearing was required.

However, we agree with plaintiffs that the circuit court failed to adequately determine the reasonableness of the attorneys' fees. In determining reasonable attorney fees, a court must consider: "(1) the professional standing and experience of the lawyer; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client." *Smith v Khouri*, 481 Mich 519, 529 (opinion of TAYLOR, C.J.), 538 (opinion of CORRIGAN, J.); 751 NW2d 472 (2008) (citation omitted).

Here, the only factor that the circuit court addressed was the professional standing and experience of the attorneys. The circuit court never addressed the amount of skill, time, and labor involved; the results achieved; the difficulty of the case; or the nature and length of the professional relationship with the client. *Id.* "[A] trial court is not required to give detailed findings regarding each factor." *John J Fannon Co*, 269 Mich App at 172. In this case, however, there were no findings. Because the circuit court failed to address the reasonableness factors, appellate review of its decision is effectively precluded and a remand is necessary. See *Smith*, 481 Mich at 537 ("In order to aid appellate review, the court should briefly indicate its view of each of the factors.").

## V. IMPOSITION OF SANCTIONS UPON KEVIN ADELL

Plaintiffs argue that the circuit court erred when it imposed sanctions against Kevin Adell because he was a non-party and the circuit court lacked jurisdiction over him. A challenge to



personal jurisdiction is a question of law which this Court reviews de novo. *Poindexter v Poindexter*, 234 Mich App 316, 319; 594 NW2d 76 (1999).

At the request of defendants, the circuit court ordered that Kevin Adell be responsible for paying the sanctions imposed against plaintiffs. Plaintiffs argue the circuit court could not sanction Kevin Adell personally because he is separate from the corporate entities. Kevin Adell was not a party; therefore, plaintiffs argue the circuit court issued a nullity when it imposed sanctions upon him. We disagree and conclude that circuit court has the inherent authority to assess sanctions against Kevin Adell for his conduct as it relates to this case.

Trial courts have the authority “to impose sanctions appropriate to contain and prevent abuses so as to ensure the orderly operation of justice.” *Maldonado v Ford Motor Co*, 476 Mich 372, 375; 719 NW2d 809 (2006). This includes the inherent authority to sanction litigants and their counsel. *Id.* at 376. “This power is not governed so much by rule or statute, but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Id.* citing *Chambers v NASCO, Inc*, 501 US 32, 43; 111 S Ct 2123; 115 L Ed 2d 27 (1991). Courts also are inherently empowered to sanction the bad-faith or vexatious use of the filing of collateral proceedings. *Prince v MacDonald*, 237 Mich App 186, 189; 602 NW2d 834 (1999); *In re Powell Estate*, 160 Mich App 704, 718-720; 408 NW2d 525 (1987).

In *Powell*, a legal malpractice action was filed by the mother of a five-year old boy in her capacity as next friend. The mother retained the Zeff law firm. After the mother announced her decision to terminate their representation, the law firm filed a petition for protective proceeding in the probate court, requesting a conservator be appointed to safeguard the minor child’s assets. *Powell*, 160 Mich App at 707-708. On appeal, it was concluded that the motive behind the conservancy proceeding was not concern regarding the child’s estate or the mother’s ability to manage the affairs, but rather the fear of the loss of a lucrative lawsuit from the law firm. *Id.* at 718-719. This Court noted the circuit court’s factual findings that the law firm manipulated and abused the legal system. *Id.* at 719. Consequently, the administrative fees, costs, attorney fees, and expenses were ordered paid by the law firm to ensure that the estate did not suffer any financial loss. *Id.* at 719-720.

Additionally, the decision in *Helmac Prods Corp v Roth Corp*, 150 FRD 563 (ED Mich, 1993) is noteworthy. In *Helmac Prods Corp*, the plaintiffs filed a complaint against the defendant, Roth Corporation, under the Anti-Dumping Act. *Id.* at 564. During the litigation, the defendant’s owner and director, Eric Roth, directed the destruction of documents in an effort to frustrate and hinder discovery. *Id.* at 566. Despite the fact that Eric Roth was not a party to the action, the district court determined that “it [had] the inherent power to sanction Eric Roth for his ordering the destruction of documents.” *Id.* at 568. In so holding, the district court applied a two-part test:

. . . To be subject to the [c]ourt’s inherent power to sanction, a non-party not subject to court order must (1) have a substantial interest in the outcome of the litigation and (2) substantially participate in the proceedings in which he interfered. This test will effectively limit the scope of the [c]ourt’s inherent

power to sanction to those individuals were either (1) parties, (2) subject to a court order, or (3) real parties in interest. [*Id.*]

Applying this test, the district court determined it had the authority to sanction Eric Roth because he “had a substantial interest in the litigation and had previously participated in the litigation in a substantial way.” *Id.* at 567.

While Eric Roth was not about to become a party at the time that he directed the destruction of documents, he was closely tied to the litigation. As the owner of the corporate defendant, he had a substantial interest in the outcome of the litigation. Moreover, as the chief executive officer in the company, he played an active role in the conduct of this litigation, in which he faced his former partner and chief competitor as his adversary. [*Id.* at 566.]

We conclude that the *Helmach Prods Corp* decision is persuasive. As applied to this case, Kevin Adell was not a party to the litigation. However, Kevin Adell was the president and director of Adell Broadcasting and STN.com. Kevin Adell controlled the companies and filed the complaint on behalf of the companies. Kevin Adell had a substantial interest in the proceedings, and he substantially participated in the proceedings. Therefore, he was a real party in interest, and the circuit court had the inherent authority to impose sanctions against him.

With that said, we conclude that the circuit court erred when it imposed the sanctions against Kevin Adell without giving him an opportunity to appear and contest the sanctions. A basic requirement of due process is that a party must receive some type of reasonable notice and opportunity to be heard prior to the imposition of sanctions. *Hicks v Ottewell*, 174 Mich App 750, 757; 436 NW2d 453 (1989); see also *Mathews v Eldridge*, 424 US 319, 333-335; 96 S Ct 893; 47 L Ed 2d 18 (1976). In this case, there is no indication that Kevin Adell had a meaningful opportunity to appear before the circuit court imposed sanctions upon him. Although plaintiffs’ counsel objected, plaintiffs’ counsel presumably represented the interest of the corporations, not Kevin Adell. Therefore, the circuit court’s order requiring Kevin Adell to personally pay the sanctions must be vacated.

## VI. CONCLUSION

The order of the circuit court dismissing plaintiffs’ complaint for lack of subject-matter jurisdiction is affirmed. Plaintiffs’ complaint was premised on activity arising from the administration of the Franklin Z. Adell Trust and the estate of Franklin Z. Adell. Therefore, it was within the exclusive jurisdiction of the probate court. We also affirm the circuit court’s finding that plaintiffs’ complaint was frivolous. We vacate the award of sanctions against Kevin Adell and remand the matter back to the circuit court. The circuit court has the inherent power to sanction Kevin Adell for his conduct as it relates to this case. However, due process requires that Kevin Adell have a meaningful opportunity to appear and present arguments against the imposition of sanctions against him. On remand, the circuit court also must make findings addressing the reasonableness factors.

Affirmed in part, reversed in part and remanded for further proceedings. We do not retain jurisdiction.

/s/ Karen M. Fort Hood

/s/ Joel P. Hoekstra

/s/ Patrick M. Meter